

MESSAGE FROM THE GOVERNOR

The Chair laid before the House and had read the following Message from the Governor:

May 1, 1969

To The House of Representatives,
Sixty-first Legislature, Regular Session:

Under the provisions of Article 4, Section 14, of the Texas Constitution, I am herewith vetoing and returning to you House Bill 117, the Texas Tort Claims Act. I realize that the time has arrived when the doctrine of absolute governmental immunity must be reconsidered. This bill, however, is so broad and all-encompassing in scope as to impose upon the taxpayers of the State of Texas an onerous burden. It is my belief that a more limited modification of the doctrine of governmental immunity should be considered by the Legislature, particularly as concerns injuries arising from the operation of motor vehicles and other employee-operated equipment. It is my hope that the Legislature will enact such legislation during this session.

Presently, governmental units other than municipalities are immune from all tort liability, and municipalities are immune from most such liability. A person injured due to the negligence of a person acting on behalf of the State or governmental subdivision is not without remedy, however, since such injured person may prosecute his

legal claims against the negligent employee.

Governmental units are required to perform functions and furnish services for the welfare of the public as a whole—services and functions that private persons or businesses cannot or will not perform, such as police and fire protection, road and highway construction and maintenance, and administrative functions which necessitate maintaining buildings for public records and other public service activities. In addition, governmental units maintain parks and recreational areas for public enjoyment. By their very nature, these functions require that units of government maintain numerous buildings and vast expanses of property. Therefore, I have the following specific objections to House Bill 117:

1. House Bill 117 is too broad and all-encompassing in scope and could give rise to a multitude of litigation involving the State of Texas and all political subdivisions in the State of Texas.

2. House Bill 117 could specifically give rise to a multitude of on-premises cases imposing a harsh duty on all political subdivisions which might ultimately result in the State's having to curtail its services to the people in order to avoid possible liability from the conditions or use of property belonging to the State or other political subdivisions such as state highways, county roads, parks and water reservoirs.

3. House Bill 117 could give rise to liability for the absence or malfunction of any traffic signal or sign on any of the thousands of miles of highways, roads, and streets in the State of Texas.

4. House Bill 117 would change the liability of the State and all political subdivisions with respect to employee injuries and could in practical effect require all political subdivisions to elect to come under the provisions of the Workmen's Compensation Act, and to revise and reevaluate all of the employee benefits currently provided in lieu of Workmen's Compensation.

5. House Bill 117 exempts from per-

sonal liability, for his own acts of negligence, all employees of the State or any political subdivision operating a motor vehicle in the scope of his employment.

6. House Bill 117 applies the doctrine of attractive nuisance to all governmental operations, with the exception of canals and water reservoirs in rural districts. Many governmental facilities are by necessity such as would be termed "attractive nuisances." Governmental units thus would become open to increased liability and expense beyond any reasonable limits.

Accordingly, I herewith veto and return to you House Bill 117.

I do recommend, however, that the Legislature enact a more limited Act covering claims arising from the operation of motor vehicles and equipment. If the Legislature still desires to include within such Act liability arising from the condition or use of governmental property, I recommend that the following provisions should be incorporated:

1. Exempt from the application of the Act liability arising from the absence or malfunction of any traffic or road sign, signal or other warning device.

2. Limit the duty of the governmental subdivision to persons on government property to that duty owed to a licensee by the owner of private property.

3. Abolish the doctrine of attractive nuisance as applied against governmental units in all cases. House Bill 117 only abolishes the doctrine in rural areas, in limited cases.

4. Leave the law on employee liability for torts as it now is, with a provision, if desirable, that the State or political subdivision may not require any employee to purchase liability insurance as a condition of his employment where the political subdivision is insured by a policy of liability insurance.

Respectfully submitted,
PRESTON SMITH
Governor